


mailbox rule, a pro-se prisoner's habeas petition is deemed "filed" when he relinquishes control of it to the prison mailroom authorities." United States v. McNeill, 523 F. App'x 979, 983 (4th Cir. 2013) (unpublished). In this case, Petitioner swore under penalty of perjury that he deposited his habeas Petition in the prison mail system on October 23, 2016, and both the Petition and IFP Application were signed on October 23, 2016. (Pet. 19, Doc. No. 1; Appl. 2, Doc. No. 2.) The Clerk of Court's Office, however, received both documents on January 20, 2017 (Appl. 1), and the envelope in which they were mailed bears a January 17, 2017 North Carolina Department of Public Safety date stamp. (Doc. No. 1-2.)

Consequently, Petitioner shall be directed to file evidence that he, in fact, placed his § 2254 Petition and IFP Application in the prison mail system on or about October 23, 2016. Alternatively, Petitioner may file an application to proceed without prepaying fees and costs that reflects his financial situation as it existed on or about January 17, 2017. Failure to comply with the Court's Order may result in denial of Petitioner's current IFP Application without further notice.

IT IS, THEREFORE, ORDERED that within 21 days of entrance of this Order, Petitioner shall file: 1) evidence that he placed his § 2254 Petition and Application to Proceed in District Court without Prepaying Fees or Costs in the prison mail system on or about October 23, 2016; **or** 2) an application to proceed without prepaying fees and costs that reflects his financial situation as it existed on or about January 17, 2017.

Signed: January 27, 2017


Frank D. Whitney
Chief United States District Judge

